

*National Labor Relations Board*  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** January 30, 1998

**TO:** James S. Scott, Regional Director, Region 32

**FROM:** Barry J. Kearney, Associate General Counsel, Division of Advice

**SUBJECT:** United States Postal Service, Case 32-CA-16379(P)

530-6067-6067-3400, 530-6067-6067-8100

This Section 8(a)(5) case, involving the Union's request that the Employer produce a witness for an interview in connection with a pending grievance, was submitted for advice pursuant to OM 97-45 (July 2, 1997), dealing with cases raising the Anheuser-Busch<sup>(1)</sup> issue of whether the statutory duty to provide information requires the production of witness statements.

FACTS

Briefly, an employee was involved in an "at fault" motor vehicle accident while working. In accordance with established procedure, the employee was sent for a "medical assessment" at a clinic under contract with the Employer. As a result of that assessment, the employee was directed to take a drug test, and was placed on emergency unpaid suspension. The Union grieved the suspension, and requested permission to interview the physician supposedly responsible for the employee being given the drug test. The Region states that the Union did not ask for the name of the attending physician, and to the extent that the Union requested any notes or statements made by the attending physician, that information appears to have been provided. The Employer has not complied with the Union's request to interview the physician.

ACTION

We agree with the Region that this charge should be dismissed, absent withdrawal.

Initially, the instant case does not implicate the Board's decision in Anheuser-Busch as it does not involve a request for witness statements. In fact, it appears that the Employer has provided the Union with all the information requested by the Union regarding the employee's visit to the physician, including written information. There is no indication that the Union is unable to contact the clinic and physician directly in an effort to interview the physician. Moreover, the contract clinic's physician does not appear to be an employee of the Employer, so it is unnecessary to reach the issue as to whether Section 8(a)(5) requires an employer to make its supervisors available for interviews in connection with pending grievances.<sup>(2)</sup> In all these circumstances, the charge should be dismissed, absent withdrawal.

B.J.K.

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<sup>1</sup> Anheuser-Busch, Inc., 237 NLRB 982 (1978).

<sup>2</sup> See Whirlpool Corp., 281 NLRB 17, 25 n. 26 (1986)(an alternative reason for finding no violation under Anheuser-Busch for refusing to make a witness available to a union "could be ... that the General Counsel has failed to establish that the 'information' requested was sufficiently under the control of Respondent so as to make it capable of fulfilling the request in the first place").